

MAURICE W. HOOKER,
Plaintiff,
v.
I. GOMEZ,
Defendant.

Case No. 16-cv-07019-HSG (PR)

**ORDER DENYING PLAINTIFF'S
SECOND REQUEST FOR
APPOINTMENT OF COUNSEL**

Re: Dkt. No. 40

Plaintiff, an inmate at the California Men's Colony, filed this *pro se* civil rights action under 42 U.S.C. § 1983, alleging various constitutional violations by prison staff stemming from his previous incarceration at the Correctional Training Facility ("CTF"). On March 5, 2018, the Court reviewed plaintiff's amended complaint and found that, liberally construed, it stated a cognizable claim for deliberate indifference to safety as against CTF correctional officer I. Gomez. Defendant Gomez has filed a motion for summary judgment. Now before the Court is plaintiff's second request for appointment of counsel.

A district court has the discretion under 28 U.S.C. § 1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915(e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident. The request for appointment of counsel is therefore DENIED. The Court will consider appointment of counsel on its own motion, and seek volunteer counsel to agree to represent plaintiff pro bono, if it determines at a later time in the proceedings that appointment of counsel is warranted.

1 Plaintiff is reminded that his opposition to the motion for summary judgment is due on or
2 before October 30, 2018. The Court notes that on October 12, 2018, plaintiff filed a document
3 titled "Plaintiff's Respond to Defendants' *Rand* Warning Regarding Upcoming Trial." *See* Dkt.
4 No. 39. If plaintiff does not file an opposition to the summary judgment motion by October 30,
5 2018, his October 12, 2018 filing will be construed as his opposition.

6 This order terminates Dkt. No. 40.

7 **IT IS SO ORDERED.**

8 Dated: 10/23/2018

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11 HAYWOOD S. GILLIAM, JR.
12 United States District Judge